IN THE

Supreme Court of the United

OCTOBER TERM, 1941

No. 359

FRANK D. KLAMBIEWICZ, *Petitioner*,

v.

THE WESTCHESTER DEPOSIT AND TRUST COMPA
tion, and MICHAEL WALSH, Trustee under
MR. FRANCIS YOUNG, *Respondents*.

On Petition for a Writ of Certiorari to the
Court of Appeals for the District of

BRIEF FOR THE RESPONDENTS IN OP

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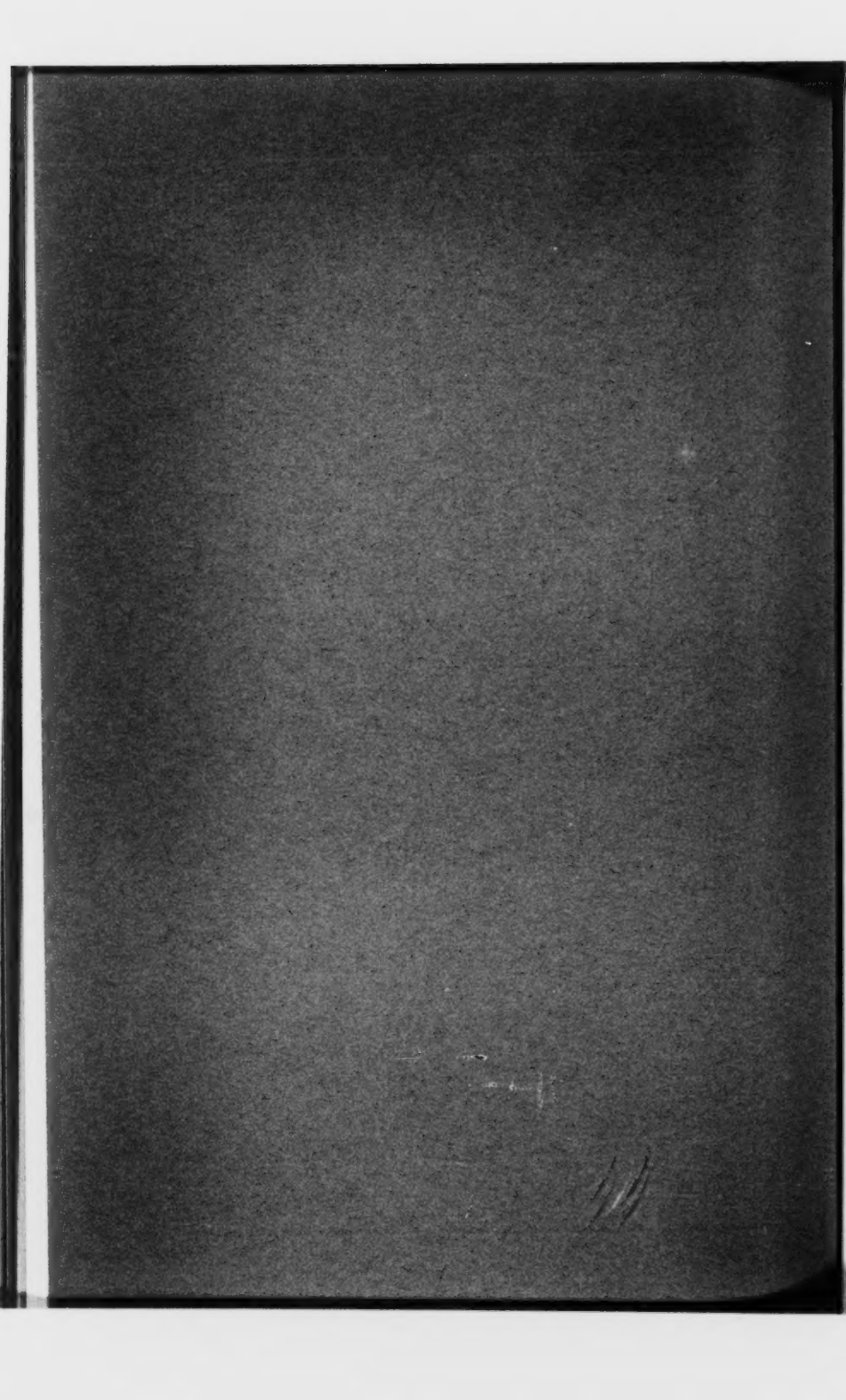

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

No. 859

FRANK D. KLIMKIEWICZ, *Petitioner,*

v.

THE WESTMINSTER DEPOSIT AND TRUST COMPANY, a Corporation, and MICHAEL WALSH, Trustees under the will of MR. FRANCIS YINGLING, *Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF FOR THE RESPONDENTS IN OPPOSITION.

OPINION BELOW.

The opinion of the United States Court of Appeals for the District of Columbia is reported in 122 Fed. (2nd) 957. (R. 19)

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered September 22, 1941 and petition for a writ of certiorari was filed January 10, 1942. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED.

1. An absolute right of appeal from the District Court to the Court below having been given to petitioner by statute, was either the District Court or the Court below empowered to nullify such right by upholding a final judgment against petitioner when the District Court was, admittedly, without recollection—and the Court below was necessarily under similar handicap—concerning evidence vitally affecting the warrantability or unwarrantability of the judgment?

2. May a right of appeal be, in effect, lost or destroyed due to a failure of recollection by the trial justice?

3. May any Court, either of first instance or appellate, conjecture away legal title to land?

STATEMENT.

On June 2, 1938, respondents filed their bill under Section 1 of Title 25, D. C. Code of 1929 to quiet title to certain real property claimed to be owned by them in the District of Columbia (R. 1). At the Pre-trial Proceedings (R. 9) it was stipulated by the parties that "This stipulation dispenses with proof of records, but reserves the claim of adverse possession, which is agreed to be *the sole issue in this case.* The case was tried by the Court and the testimony of the witnesses was held by the trial court to establish that plaintiff's decedent and their predecessors in title held actual, exclusive, continuous, open, notorious and adverse posses-

sion for more than twenty years and acquired a prescriptive title (R. 10). The defendant did not testify, and called no witnesses to dispute the plaintiffs' claim. Margery Catherine Miller, one of the witnesses called by respondents, testified that, "*My father's fence was right at the end of the lot.*" The original fence constructed by my father was the same fence that was there when I deeded the property in 1926, except for necessary repairs where it had rotted." (R. 15) This same witness testified that she was 71 years of age and she was born on this property (R. 14) in the year 1869 and did not leave the property until she was married in 1891 (R. 15).

ARGUMENT.

Petitioner contends (Pet. 3) that the trial Justice was without recollection whether or not witness Margery Catherine Miller testified to an intervening space between the mill and the rear line of her father's property. The trial Justice refused to certify that the witness did so testify (R. 16) as stated on page 3. This witness did testify that her father had enclosed the property and this fence was still in the same place in 1926 when she sold the property. In *Sharon* v. *Tucker,* 144 U. S. 533, this Court held that after an adverse holding for over 20 years the occupant has a clear title, and in this case the title by adverse possession had fully matured prior to November 1926 (Pet. 2) when Petitioner contends the adverse holding began.

There is no requirement that the trial Court recapitulate all the items of evidence on which its judgment is based, and the findings of the trial Court should not be disturbed unless clearly wrong. This Court's attention is called to the sworn statement of Petitioners (R. 6) as follows:

> "Said parcel is of special and peculiar value to this defendant, in that it *immediately* adjoins his mill property and can be most advantageously used in connection therewith."

From the above statement it is apparent why the Petitioners have exercised every possible means of delaying the respondents in obtaining a clear and marketable title, such dilatory tactics have continued until nearly four years will have elapsed from the filing of the original bill until this Court renders its decision.

CONCLUSION.

The decision below is correct and there is no real conflict of decisions nor any question of general importance involved. The only question presented by the petition is suppression or correction of the record in regard to the unwarranted attack on the United States Court of Appeals for the District of Columbia. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Attorney for Respondents.